IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 951 of 1984

with

CRIMINAL APPEAL No 1118 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GHANSHYAM AGRO CHEMICALS & 5

Appearance:

1. Criminal Appeal No. 951 of 1984

MR ND GOHIL Ld. APP for Petitioner

MS SNEHA A JOSHI For Ms. VASUBEN P SHAH for Respondent No. 1

2. Criminal AppealNo 1118 of 1984

MR ND GOHIL Ld. APP for Petitioner

MS SNEHA A JOSHI for Ms. VASUBEN P SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 07/07/2000

COMMON ORAL JUDGEMENT

In so far as Criminal Appeal No. 951/1984 is concerned, the respondents were tried before the learned Judicial Magistrate, First Class, Modasa for the offence punishable under sec. 68 and 36 of the Gujarat Agriculture Produce Market Act, 1963 (hereinafter referred to as 'the Act' for short) as well as for breach of rule 56 of the Gujarat Agriculture Produce Market Rules, 1965 (hereinafter referred to as 'the Rules") and the case was registered as Criminal Case No. 2187/82.

In so far as Criminal Appeal No. 1118/84 is concerned, the same has been filed by the original complainant but it arises from the same decision as in the earlier appeal.

It has been prosecution case that the Act has been made applicable to Modasa by the Government of Gujarat. It is necessary under the said Act for any merchant carrying on the business in the materials/ produce mentioned in the Schedule to take licence from the concerned Agriculture Produce Market Committee, and that no merchant without the licence can sell or purchase the said goods.In case of violation of the relevant provisions of the Act, the person concerned committing breach would be liable for the offence punishable under sec. 36 of the Act and Rule 56 of the Rules. It has been the prosecution case that first two respondents were carrying on business of selling and purchasing seeds in the market yard without obtaining licence,hence notice was issued directing them to obtain licence but they continued their business without obtaining the licence, thus committing offences under the provisions of the Act and Rules. Upon their prosecution by the complainant, the learned Judicial Magistrate, First Class, Modasa by his impugned judgment and order dated 2.4.1984 acquitted the respondents/accused from the offences charged against them holding that the complainant failed to establish beyond reasonable doubt that the respondents were carrying on business in any of the agricultural produce described in the schedule referred to in Sec. 2(1) of the Act.

The Government of Gujarat as also the complainant have preferred these appeals against the same judgment referred to hereinabove.

Mr ND Gohil, learned APP has argued that the learned Magistrate has committed an error in holding that the certified seeds of Bajri cannot be included within the definition 'Agricultural produce' contained in Sec.2(1) of the Act. He, however, could not point out any error committed by the learned Judicial Magistrate, First Class, in appreciation of the evidence which clearly indicates that the prosecution failed to establish the fact that the accused persons carried on business in or entered into any transactions with regard to any of the agricultural produce described in the schedule at the given point of time. It has come in evidence that the hybrid Bajri seeds were sold by the accused at the given point of time for the purpose of growing agricultural produce of Bajri. The same has been treated with insecticides and sold in sealed bags, but the same are not meant for human consumption since they have been treated with poison. In fact, the first respondent has been dealing in hybrid seeds incidentally. Its main business appears to be that of Agro-chemicals. The learned Magistrate has also held that the prosecution failed to establish by adducing necessary evidence the authority of the complainant as contemplated by Sec. 41(2) of the Act. According to that provision, prosecution under the Act might be instituted by any person duly authorised generally or specially in writing by the market committee in that behalf. The accused persons have been acquitted upon appreciation of evidence and upon finding of the learned Magistrate that the prosecution failed to establish the guilt of the accused beyond reasonable doubt. Learned APP has not been able to point out before this Court any error in appreciation of evidence. Learned Magistrate has also relied upon the decision of the Madhya Pradesh High Court (Indore Bench), in the case of Satyapal Anand v. The State of Madhya Pradesh & Ors., reported in AIR AIR 1979 M.P., p. 6, pointing out distinction between wheat and Wheat-seeds. Learned Magistrate has dealt with the evidence adduced by the prosecution at length and has come to the conclusion that the complainant has also failed to establish that he was authorised to file complaint as contemplated by the aforesaid provision of the Act. The learned APP has read the evidence but could not point out any error committed by the learned Magistrate in appreciating the evidence in that respect also.

In the result, both these acquittal appeals are dismissed.

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